

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PFIZER INC)
)
)
Plaintiff/Counterclaim)
Defendant,)
)
v.) Civil Action No. 06-89-JJF
)
TEVA PHARMACEUTICALS USA, INC.) **JURY TRIAL DEMANDED**
and TEVA PHARMACEUTICAL)
INDUSTRIES LTD.)
)
Defendants/Counterclaim)
Plaintiffs.)
)

**PLAINTIFF PFIZER INC'S REPLY TO THE COUNTERCLAIMS OF
DEFENDANT TEVA PHARMACEUTICALS USA, INC.**

Pfizer Inc (“Pfizer”), by and through its undersigned counsel, hereby files its Reply to Counterclaims of Defendant Teva Pharmaceuticals USA, Inc. (“Teva USA”) in the above-captioned action. Pfizer’s reply to the counterclaims employs the same numbered paragraphs, beginning at paragraph 49, as used by defendant Teva USA in its Amended Answer and Counterclaims (D.I. 36). Except to the extent expressly and specifically admitted herein, such admissions being solely for the purposes of this action and none other, Pfizer denies each and every allegation contained in the Counterclaims.

REPLY TO THE COUNTERCLAIMS AGAINST PFIZER

THE PARTIES

49. Upon information and belief, admitted.
50. Admitted.

51. Admitted.

52. Admitted.

JURISDICTION AND VENUE

53. Pfizer admits that the Counterclaims purport to state a cause of action for declaratory judgment allegedly based on claims arising under 35 U.S.C. §§ 1 *et seq.*, and thus this Court has subject matter jurisdiction over this counterclaim action pursuant to 28 U.S.C. §§ 1331 and 1338(a). All other allegations in paragraph 53 are denied on the basis that Pfizer lacks knowledge or information sufficient to form a belief as to their truth.

54. Pfizer admits that it has sued Teva USA for, *inter alia*, infringement of Pfizer's U.S. Patent No. 6,977,243 ("the '243 patent"), thus there is an actual controversy within the Court's jurisdiction pursuant to 28 U.S.C. § 2201 and 2202. Pfizer also admits that the Counterclaims purport to state a cause of action for declaratory judgment that the '243 patent is not infringed and invalid. Pfizer denies all other allegations in paragraph 54.

55. Admitted.

56. Admitted.

THE CONTROVERSY

57. Upon information and belief, admitted.

58. Upon information and belief, admitted.

59. Denied.

60. Admitted.

61. Pfizer admits that on February 8, 2006, it filed the present action against

Teva USA for infringement of the '243 patent in this Court and the Complaint in this action speaks for itself. All other allegations in paragraph 61 which are inconsistent with the Complaint are denied on the basis that Pfizer lacks knowledge or information sufficient to form a belief as to their truth.

62. Admitted that an actual and justiciable controversy exists as alleged but all other allegations of paragraph 62 are denied.

**COUNT I
(Declaratory Judgment of Noninfringement)**

63. Pfizer incorporates by reference and restates its replies to paragraphs 49-62 as though fully set forth herein.

64. Denied.

**COUNT II
(Declaratory Judgment of Noninfringement under 35 U.S.C. § 271(e)(2)(A))**

65. Pfizer incorporates by reference and restates its replies to paragraphs 49-64 as though fully set forth herein.

66. Denied.

**COUNT III
(Declaratory Judgment of Invalidity)**

67. Pfizer incorporates by reference and restates its replies to paragraphs 49-66 as though fully set forth herein.

68. Denied.

RESPONSE TO TEVA USA'S PRAYER FOR RELIEF

Pfizer denies that Teva USA is entitled to any relief as sought in the "Prayer for Relief" of the Counterclaims.

WHEREFORE, Pfizer requests the following relief:

A. An order dismissing all of Teva USA's Counterclaims with prejudice and denying all relief sought by Teva USA.

B. An order declaring that the '243 patent is not-invalid and that it is enforceable and has been infringed by Teva USA.

CONNOLLY BOVE LODGE & HUTZ LLP

/s/ Rudolf E. Hutz
Rudolf E. Hutz (#484)
Daniel C. Mulveny (#3984)
1007 N. Orange Street
P. O. Box 2207
Wilmington, DE 19899-2207
(302) 658-9141
Attorneys for Pfizer Inc

Dated: July 10, 2006
471684_1.DOC

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2006, I electronically filed **PLAINTIFF PFIZER INC'S REPLY TO THE COUNTERCLAIMS OF DEFENDANT TEVA PHARMACEUTICALS USA, INC.** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Richard D. Kirk
The Bayard Firm
222 Delaware Avenue, 9th Floor
Wilmington, DE 19801

I hereby certify that on July 10, 2006, I have mailed by First Class Mail, the document(s) to the following non-registered participants:

Steven Lee
Elizabeth J. Holland
Sheila Mortazavi
Cynthia Lambert Hardman
Kenyon & Kenyon LLP
One Broadway
New York, NY 10004

/s/ Rudolf E. Hutz
Rudolf E. Hutz (#484)
Daniel C. Mulveny (#3984)
1007 N. Orange Street
P. O. Box 2207
Wilmington, DE 19899-2207
(302) 658-9141
Attorneys for Pfizer Inc